

1 Thomas R. Burke (State Bar No. 141930)
DAVIS WRIGHT TREMAINE LLP
2 505 Montgomery Street, Suite 800
San Francisco, California 94111
3 Telephone: (415) 276-6500
Facsimile: (415) 276-6599
4 Email: thomasburke@dwt.com

5 Abigail B. Everdell (*pro hac vice forthcoming*)
DAVIS WRIGHT TREMAINE LLP
6 1251 Avenue of the Americas, 21st Floor
New York, New York 10020
7 Telephone: (212) 489-8230
Facsimile: (212) 489-8340
8 Email: abigaileverdell@dwt.com

9 Attorneys for Defendants
Candide Group, LLC and Morgan Simon

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 CORECIVIC, INC.,

15 Plaintiff,

16 v.

17 CANDIDE GROUP, LLC and MORGAN
SIMON,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 4:20-cv-03792-WHA

**DECLARATION OF THOMAS R. BURKE
IN SUPPORT OF SPECIAL MOTION TO
STRIKE THE COMPLAINT**

[Special Motion to Strike and Request for
Judicial Notice Filed Concurrently]

Judge: Hon. William Alsup
Date: October 22, 2020
Time: 8:00 a.m.
Location: San Francisco Courthouse
Courtroom 7 – 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Action Filed: March 4, 2020
Action Transferred: June 7, 2020

DECLARATION OF THOMAS R. BURKE

I, Thomas R. Burke, hereby declare as follows:

1. I am a partner with Davis Wright Tremaine LLP, attorneys for defendants Candide Group, LLC and Morgan Simon in this action. I am admitted to appear before this Court and all state and federal courts in California. I have personal knowledge of the facts stated in this declaration and could competently testify to them if called as a witness. I submit this declaration in support of Defendants Candide Group, LLC and Morgan Simon's Special Motion to Strike.

2. Attached as **Exhibit 1** is a true and correct copy of the post "What Do Big Banks Have To Do With Family Detention? #FamiliesBelongTogether Explains," published by Morgan Simon on September 25, 2018 at the URL

<https://www.forbes.com/sites/morgansimon/2018/09/25/what-do-big-banks-have-to-do-with-family-detention-familiesbelongtogether-explains/#444953ab2b6a>.

3. Attached as **Exhibit 2** is a true and correct copy of the post "JPMorgan Chase Is Done With Private Prisons," authored by Morgan Simon, and as originally published March 5, 2019. Exhibit 2 shows a March 6, 2019 capture of this post by Archive.org's Wayback Machine, which is available at the URL

<https://web.archive.org/web/20190306133939/https://www.forbes.com/sites/morgansimon/2019/03/05/jpmorgan-chase-is-done-with-private-prisons/>.

4. Attached as **Exhibit 3** is a true and correct copy of the post "GEO Group Running Out of Banks as 100% of Known Banking Partners Say 'No' to the Private Prison Sector," authored by Morgan Simon, and as originally published on September 30, 2019. Exhibit 3 shows an October 1, 2019 capture of this post by the Archive.org's Wayback Machine, which is available at the URL

<https://web.archive.org/web/20191001182936/https://www.forbes.com/sites/morgansimon/2019/09/30/geo-group-runs-out-of-banks-as-100-of-banking-partners-say-no-to-the-private-prison-sector>.

5. Attached as **Exhibit 4** is a true and correct copy of the post "JPMorgan Chase Is Done With Private Prisons," as updated on October 10, 2019, which is currently available at the

URL <https://www.forbes.com/sites/morgansimon/2019/03/05/jpmorgan-chase-is-done-with-private-prisons/#4ffe3e3a690d>.

6. Attached as **Exhibit 5** is a true and correct copy of the post “GEO Group Running Out of Banks as 100% of Known Banking Partners Say ‘No’ to the Private Prison Sector,” as updated on October 10-11, 2019, which is currently available at the URL <https://www.forbes.com/sites/morgansimon/2019/09/30/geo-group-runs-out-of-banks-as-100-of-banking-partners-say-no-to-the-private-prison-sector/#6090a03e3298>.

7. Attached as **Exhibit 6** is a true and correct copy of the October 28, 2010 NPR.com article “Prison Economics Help Drive Ariz. Immigration Law,” authored by Laura Sullivan, and available at the URL <https://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law> (the “NPR Article”). The NPR Article reports on the private prison industry’s role in the development of an Arizona law requiring the incarceration of anyone who cannot prove their legal immigration status. The article describes how in-depth reporting by NPR revealed “a quiet, behind-the-scenes effort to help draft and pass [the Arizona bill] by an industry that stands to benefit from it: the private prison industry.” *Id.* at 4. Specifically, the article describes how the Arizona senator who came up with the bill first presented it to a private group called the American Legislative Exchange Council (or “ALEC”), and that multiple officials employed by ALEC member CoreCivic (then called Corrections Corporation of America, or CCA) were at that meeting. *Id.* at 6. The NPR Article notes CoreCivic’s statement that it “unequivocally has not at any time lobbied — nor have we had any outside consultants lobby – on immigration law,” *id.* at 9, but also reports that CoreCivic hired a lobbyist to work in the Arizona state capitol the same week the bill was introduced, and that of the 36 initial cosponsors to the bill, 30 received campaign donations from prison lobbyists or private prison companies, including CoreCivic. *Id.* at 8-9. The NPR Article was later updated to include clarifications that the article was not meant to imply that CoreCivic was “the catalyst” behind Arizona’s law, nor that it “wrote the language” of the model legislation at the ALEC meeting. *Id.* at 10.

8. Attached as **Exhibit 7** is a true and correct copy of the August 20, 2016 Business Insider article “The biggest problem with private prisons starts on Capitol Hill,” authored by Michelle Mark, and available at the URL <https://www.businessinsider.com/private-prisons-lobby-for-their-own-existence-2016-8> (the “Business Insider Article”). The Business Insider Article

DAVIS WRIGHT TREMAINE LLP

1 reports on how “the most problematic aspect about private-prison companies,” including CoreCivic
 2 (referred to in the article by its prior moniker CCA), “may be their efforts on Capitol Hill and in
 3 statehouses across the country to lobby for laws that expand demand for their own services.” *Id.* at
 4 2. The Business Insider article specifically cites the \$25 million total in lobbying spent by
 5 CoreCivic and its largest competitor over the years, and though it acknowledges Plaintiff’s
 6 insistence “that it doesn’t lobby for policies that determine ‘the basis for or duration of an
 7 individual’s incarceration or detention.’” *Id.* At the same time, the Business Insider Article cites a
 8 2011 Justice Policy Institute report (*see infra*) which documents “several pieces of federal
 9 legislation the CCA lobbied on in recent years, including funding related to private prisons and
 10 Immigrations and Customs Enforcement (ICE) detention.” *Id.* at 2.

11 9. Attached as **Exhibit 8** is a true and correct copy of the June 2011 Justice Policy
 12 Institute report “Gaming the System: How the Political Strategies of Private Prison Companies
 13 Promote Ineffective Incarceration Policies,” available at the URL
 14 http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf (the “JPI
 15 Report”). Focusing in particular on CoreCivic (referred to as CCA) and its largest competitor, *see*
 16 *id.* at 5, JPI Report presents a thorough analysis of how,

17 While private prison companies may try to present themselves as just
 18 meeting existing ‘demand’ for prison beds and responding to current
 19 ‘market’ conditions, in fact they have worked hard over the past
 20 decade to create markets for their product. As revenues of private
 21 prison companies have grown over the past decade, the companies
 have had more resources with which to build political power, and
 they have used this power to promote policies that lead to higher rates
 of incarceration.

22 *Id.* at 2. It also reports that “private prison companies have had either influence over or helped to
 23 draft model legislation such as ‘three-strikes’ and ‘truth-in-sentencing’ laws, both of which have
 24 driven up incarceration rates and ultimately created more opportunities for private prison
 25 companies to bid on contracts to increase revenues,” *id.* at 3, and describes a pattern of strategic
 26 “campaign contributions, lobbying and building relationships and associations,” in order “to
 27 influence criminal justice policies in ways that lead to more people in prison and more money in
 28 their pockets.” *Id.* at 15. In support of these statements, the JPI Report lays out detailed records of

DAVIS WRIGHT TREMAINE LLP

1 campaign contributions and lobbying activity by CoreCivic, *id.* at 15-21, 23, 25, and highlights the
 2 difficulty of tracing state-level lobbying, since state-level disclosure requirements are inconsistent.
 3 *See id.* at 26. The JPI Report also describes CoreCivic’s deep involvement with ALEC, which has
 4 “facilitated” model legislation that benefits private prisons by ensuring “higher rates of state
 5 incarceration.” *Id.* at 29. The JPI Report specifically cites reporting in the NPR Article concerning
 6 CoreCivic’s activities in Arizona. *Id.* at 30.

7 10. Attached as **Exhibit 9** is a true and correct copy of the web page “Morgan Simon:
 8 Changing the Face of Finance,” published at MorganSimon.com, and available at the URL
 9 <http://morgansimon.com/morgans-bio>.

10 11. Attached as **Exhibit 10** is a true and correct copy of the web page “Our Portfolio,”
 11 published at CandideGroup.com, and available at the URL <https://candidgroup.com/portfolio>.

12 12. Attached as **Exhibit 11** is a true and correct copy of the web pages “About
 13 CoreCivic,” and “What We Do, What We Don’t Do,” published at CoreCivic.com, and available at
 14 the URLs <https://www.corecivic.com/about> and [https://www.corecivic.com/what-we-do-what-we-](https://www.corecivic.com/what-we-do-what-we-dont-do)
 15 [dont-do](https://www.corecivic.com/what-we-do-what-we-dont-do).

16 13. Attached as **Exhibit 12** is a true and correct copy of plaintiff CoreCivic, Inc.’s 2019
 17 Form 10-K Annual Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934,
 18 which is available at the URL [http://ir.corecivic.com/static-files/78f48d3d-5df1-44e2-ba20-](http://ir.corecivic.com/static-files/78f48d3d-5df1-44e2-ba20-fce435193496)
 19 [fce435193496](http://ir.corecivic.com/static-files/78f48d3d-5df1-44e2-ba20-fce435193496).

20 I declare under penalty of perjury under the laws of the United States of America and the
 21 State of California that the foregoing is true and correct. Executed this 6th day of August, 2020, at
 22 Albany, California.

23
 24 /s/ Thomas R. Burke

25 Thomas R. Burke
 26
 27
 28